

86-00168

OFFICE OF THE ATTORNEY GENERAL



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State Agencies & Departments
Administrative Hearings
Witnesses - Funds

1. The Commissioner may assess but not pay witness fees and mileage to witnesses who claim such costs under §27-2-26(b) for attendance at administrative hearings.
2. Where the Commissioner requests the administrative hearing, the examined party, if found to be guilty, must pay witness fees, mileage, and actual expense necessarily incurred.
3. A state agency may fully reimburse its own witnesses.

Dear Mr. DeBellis:

We are in receipt of your request for an opinion from this office. You have asked the following question:

How should the Insurance Department reimburse its witnesses for expenses incurred as a result of their attendance before administrative hearings, as well as state and federal court proceedings, for both in-state and out-of-state travel?

Section 27-2-26(b) Code of Alabama, 1975, applicable to administrative hearings of the Insurance Department, reads as follows:

- (b) Witness fees and mileage, if claimed, shall be allowed the same as for testimony in a circuit court. Witness fees, mileage and the actual expense necessarily incurred in securing attendance of witnesses and their testimony shall be itemized and shall be paid by the person being examined if in the proceedings in which such witness is called such person is found to have been in violation of the law or by the person, if other than the commissioner, at whose request the hearing is held.

Under this Section, a subpoenaed witness may claim fees and mileage and such claims are allowed as if in circuit court. However, there is no specific provision for the commissioner to pay such claims. This issue was dealt with in a prior Attorney General's Opinion which stated that where the act provides for the issuance of a subpoena but does not authorize for payment of witness fees or mileage, then the Commissioner is empowered to assess such mileage costs and witness fees, but not to pay them. Quarterly Report of Attorney General, Volume 96, page 12. However, where the Commissioner has requested the administrative hearing and the party under examination is found to be in violation of the law, the examined party shall pay "witness fees, mileage and the actual expense necessarily incurred in securing attendance of witnesses and their testimony." In such instances, the costs should be itemized and only mileage for in-state travel may be assessed.

The above quoted section and explanation pertain to any witnesses who claim reimbursement for attendance by subpoena.


On the other hand, a party to a civil action, including a state agency, may fully reimburse their own witnesses regardless of whether the action is in circuit or federal court or in an administrative hearing.

In addition, the State Comptroller may issue checks to witnesses to be tendered with subpoenas prior to trial and prior to taking depositions, at least where such fees are required by the Court. Attorney General Opinion 86-00127.

I hope this sufficiently answers your question. If, however, we may be of further assistance, please do not hesitate to contact us.

Sincerely,

CHARLES A. GRADDICK
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BY:



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TLR:bc